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ARCHDEACON HALE
ON THE
SUPREMACY OF THE CROWN
IN
MATTERS OF RELIGION.

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Supremacy 1

AN INQUIRY
INTO THE
LEGAL HISTORY OF THE SUPREMACY
OF THE CROWN

IN MATTERS OF RELIGION;
WITH ESPECIAL REFERENCE TO THE CHURCH IN THE COLONIES.

(READ AT THE VISITATION OF THE ARCHDEACONRY
OF LONDON, MAY 28, 1867.)

With an Appendix.

BY
W. H. HALE, M.A.
ARCHDEACON OF LONDON.



LONDON:
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1867.

AN INQUIRY,

&c.

IN a Pamphlet recently published and entitled "The Queen's Supremacy the Constitutional Bond of Union between the Church of England and her Branches in the Colonies," I have endeavoured to show how deeply we are concerned in the maintenance of this branch of the Royal prerogative. I know how ready some of our statesmen have been to abandon it, and how desirous some of the Clergy are, that the Colonial Churches should be, what they call free Churches. Believing, however, that these wishes have arisen in a great degree from misapprehension of the nature of the "Supremacy," and that were the minds of our rulers recalled to consider its legal origin and inherent duties, they might be led at least to delay their consenting to so serious an alteration of the English Constitution, I have thought it expedient to make public my researches

on this subject, in the form of an Inquiry into the Legal History of the Supremacy of the Crown in Matters of Religion.

By way of preface, and that I may state the object at which I aimed in the commencement of my inquiries, I will quote a part of a letter which I addressed to a learned friend at the commencement of this year:—"The affairs of the Church in South Africa appear to be in sad confusion. In the ordinary concerns of life, quarrels are settled by carefully ascertaining the legal relations of the parties. Cannot the same thing be done with reference to the Queen, the Archbishop of Canterbury, the Bishop of Capetown, and the Bishop of Natal? . . . The Queen may have exceeded her powers, and the Metropolitan of Capetown may have exceeded his, but it does not, I think, necessarily follow, that all legal relations have been destroyed, or that the Archbishop of Canterbury stands in the same relation to the South African Church, as he does to the Church in the United States." Commencing with this object—the ascertaining the legal relations of certain personages, I was led on to consider generally the nature of the "Supremacy;" a learned friend of high distinction having acknowledged to me, that it was not well understood. Happy shall I be if my labours should tend to soften the prejudices which exist respecting the nature of the Queen's Supremacy,

and to cause it to be regarded as an authority wisely confided to the Sovereign for the maintenance of order and unity in our Church.

Very vague ideas are entertained upon the subject of this Essay, as if it belonged to disputes about religion in a former age, and with which we have no present concern, to differences between Henry the Eighth and the Pope, and to times when there was really some ground for fear, lest the authority of the Court of Rome should supersede that of our own Sovereign, and England be subject to foreign law. Many persons, also, know nothing of the Supremacy but what may be gathered from the words of the Oath of Supremacy¹; which so entirely consists in the abnegation of foreign jurisdiction, that it is not surprising, if the maintenance of the Supremacy is supposed wholly to consist in resistance to Papal authority, or to the pretensions of foreign princes to the throne of this country.

I need not refer to the character of the Anglo-Saxon ecclesiastical legislation, or to the changes made by William I. in the practice of the Ecclesiastical Courts, for proof that the Anglo-Saxon monarchs were supreme governors of the Anglo-Saxon Church, and that no ecclesiastical laws were made by the Anglo-Saxon clergy alone; much less need I notice those encroachments upon the liberties of the Anglican Church and upon the

¹ See the forms of the Oaths in the Appendix.

prerogative of the Crown in subsequent ages by the Court of Rome, which caused Henry the Eighth to cast off the Papal yoke, and assert the independence of his Crown and kingdom; it is sufficient that we take for the basis of our argument the statutable declaration of the relation of the Sovereign to the Church of England as its supreme Head or Governor, which is contained in the 26 Hen. VIII. c. 1, A.D. 1534, entitled², “An Act concerning the King’s Highness to be Supreme Head of the Church of England and to have authority to reform and redress all errors, heresies, and abuses in the same.” This took place in the Parliament in the second year of Cranmer’s Archiepiscopate; but the recognition by the Clergy of the King’s title of Supreme Head had been obtained four years before, in a Convocation of the Province of Canterbury under Archbishop Warham, when a subsidy had been granted by the Clergy; and when, in the form of announcing the grant to the Sovereign, after the words “*Ecclesiæ et Cleri Anglicani*,” by a unanimous vote of both Houses, the following words were inserted:—“*Cujus singularem protectorem unicum et supremum dominum, et quantum per Christi legem licet, etiam Supremum Caput, ipsius Majestatem recognoscimus.*” It is also to be noted, that the Act of Submission of the Clergy, renouncing their power of making Canons with-

² See the Statute in the Appendix.

out the King's consent, and consenting to a revision of the Constitutions Provincial by Commissioners, which was confirmed by the Acts of Parliament of '25 Hen. VIII. c. 19 and 27 Hen. VIII. c. 15, had also been made under Archbishop Warham in 1532. Unless these facts are borne in mind, an erroneous idea would be formed of these proceedings, as if the recognition of the Supremacy and the conferring upon the Crown the power to reform and redress all errors, &c., were the work of the Reformers, instead of being the enactments of a Legislature, the members of which, though denying the authority of the Pope, had not rejected a single doctrine or practice of the Church of Rome. Thus it was that the Crown received the title of Supreme Head, "with all the honours, dignities, pre-eminences, &c., belonging and appertaining thereto;" and also authority "for the repression of error and the correction of abuse." For carrying into effect the authority so conferred, Thomas Cromwell was appointed the King's Vicegerent, Vicar-General, and Official Principal, presided in that capacity in the Convocation of the Clergy, and assumed to himself the whole Ecclesiastical jurisdiction of the kingdom, the various Ecclesiastical Courts being at the same time subordinated to the King's authority, and the Officials, who therein exercised their jurisdic-

* See the Statute in the Appendix.

tion, describing themselves in their Act Books as "*Regia auctoritate fulciti*." The jurisdiction thus exercised by the King's Vicar-General was the Ecclesiastical jurisdiction; the offences of which it took cognizance were offences against the Ecclesiastical law; and the punishments inflicted ought to have been Spiritual censures. The appointment by Henry of a Vicar-General was a proceeding in perfect harmony with the principle of Delegation, by which Archbishops and Bishops committed, and still commit, their jurisdiction to others, and are relieved from the necessity of presiding in their own courts. Such delegates are either Vicars-General or Officials Principal. Had Cromwell been appointed an Official, his power would have been limited to the hearing causes; but as Vicar-General he had all the power of inquisition, correction, and punishment of crime.

In the year 1539 the Act of Parliament (31 Hen. VIII. c. 14) was passed, commonly termed "the Six Articles Act," but which is entitled an "Act for abolishing diversity of opinions." By this Act the holding any opinion contrary to five of the Articles became an offence against the Statute Law, punishable by fine, imprisonment, and death. Power was given to the King to constitute the Archbishops and Bishops, with other persons named in the Commission, Commissioners to carry the Act into effect; and in the year following, it having been found that the Arch-

bishop and Bishops were unable to execute the Commission, by reason of the size of their dioceses, another Act was passed, empowering the Commissioners of the Quorum to act without the presence of the Archbishops or Bishops. Such was the course of legislation by which the power of correction of heresy, &c., granted to the King as Supreme Head by the Act 26 Hen. VIII. c. 1 was extended, and the method by which the Criminal jurisdiction in cases of heresy, which the Statute Law had defined, was carried into effect. These latter proceedings are contemporary with the attainder of Cromwell, and the cessation of his commission as Vice-gerent; but though the Crown enforced the Six Articles Act by Commissions issued to Archbishops, Bishops, and *others*, it would appear that the general business of the Ecclesiastical Courts was carried on by the Bishops and other Ordinaries, as it had been prior to Cromwell's Vicar-Generalship, without any subordination to the supreme authority of the Crown. This may be inferred from 1 Ed. VI. c. 2, § 3, a statute which, inasmuch as it appears to contain a declaration of the fundamental principles of the English Constitution as to the Supremacy of the Crown, in all matters Temporal as well as Spiritual, it may be well to quote at length :—

“Whereas the Archbishops and Bishops, and other spiritual persons of this Realm, do use to make and send out their summons and citations, and other processes in their own names and

in such form and manner as was used in the time of the usurped power of the Bishop of Rome, contrary to the form and order of the summons and processes of the common law used in this Realm, seeing that all authoritie of jurisdiction, spiritual and temporal, is derived and deducted from the King's Majestie, as Supreme Head of the Church and Realmes of England and Ireland, and so justly acknowledged by the Clergy of the said Realmes, and that all Courts Ecclesiastical within the said two Realmes be kept by no other power or authority, other forrin or within the Realme, but by the authority of his most excellent Majestie: Be it enacted, that all summons, and citations, or other processes Ecclesiastical in all suits and causes of instance between party and party, in all causes of correction, in all causes of bastardy or bigamy, or enquiry de jure patronatus, probates of testament, and commissions of administration of persons deceased, and all acquittance of and upon accompts made by the executors, administrators, or collectors of goods of any dead person, be from the first of July next following made in the name and style of the King, as it is in writs original or judicial at the Common Law, and that the teste thereof be in the name of the Archbishop, Bishop, or other having Ecclesiastical jurisdiction, who hath the grant and Commission of the authority Ecclesiastical from the King's Highness, and that his Commissary, official or substitute, exercising jurisdiction under him, shall put his name in the citation or process after the teste."

To this was added a prohibition against using any other seal of jurisdiction but whereon the Royal Arms were engraven. The Ecclesiastical jurisdiction was thus declared to be vested in the King during the reign of Edward VI., but it was exercised in no other way than by the Ordinaries presiding in the Ecclesiastical Courts. Under the reign of Mary the whole of the proceedings of the

Legislature in the previous reigns respecting the Supremacy of the Crown in Ecclesiastical causes were reversed by the repeal of the Statutes in which the Supremacy had been asserted, or the Oath of Supremacy prescribed. But the abandonment of the Supremacy as assumed by Henry VIII. did not prevent the exercise of the Royal Prerogative for the suppression of heresies and false rumours in the widest extent. Commissions were issued by Philip and Mary for this purpose, by the sole authority of the Crown, to several Bishops, as we learn from the Letters Patent, being Letters of Commission which were issued February 16, 1555, to the recently elected Bishop of Exeter, James Tuberville, the Dean, the Mayor, and other persons, knights, lawyers, clergy, and gentry, in all about thirty. Eight were specially named—the Bishop, the Dean, the Vicar-General and five Clergymen; and any three members of the Commission, including one of the eight, were a quorum. They might inquire by juries or by witnesses, make search for books, fine and imprison, make persons enter into recognizances, certifying the bonds into the Chancery, and compel the accused to answer charges upon oath. In cases of difficulty these Commissioners were directed to refer to the Bishop of London and his colleagues, to whom a larger Commission had been granted, it being at the same time declared, that the Commission to the Bishop of

Exeter was not to be construed as prejudicing or revoking that before made to the Bishop of London. (Wilkins, *Concilia*, iv. p. 140.) Unjust and tyrannical as these proceedings now appear, and contrary to our present ideas, they were but in accordance with the principles of the age and the supposed duty of the sovereign power to stop the progress of religious error. The Vicar-Generalship of Cromwell, the Commissions of Philip and Mary, and the Court of High Commission which existed under the authority of Parliament during the reigns of Elizabeth, of James, and Charles I., were all continuous acts of a system of jurisprudence, the origin of which may be distinctly traced to the growth of the opinion, that the heretic deserved to die, and to the willingness of the secular power to execute the sentence.

The duty of the Crown to grant the writ "*de heretico comburendo*" once admitted as a principle of the English Constitution, and statutable authority granted to the Crown to repress heresies and schisms, it almost necessarily followed, that the secular power employed the punishments which were considered due to crime in general, and visited offences against religion with fine, imprisonment, and death.

On the accession of Elizabeth the well-known Act was passed (1 Eliz. c. 1) entitled "*An Act for restoring to the Crown the ancient jurisdiction over the state ecclesiastical and spiritual,*

and abolishing all foreign power repugnant to the same." This Act repealed and revived many statutes of the three preceding reigns, but it did not revive in express terms the Act of 26 Henry VIII. c. 1, which had conferred on the King the title of Supreme Head of the Church of England, and had given him authority to reform and redress all errors, heresies, and abuses in the same. It took away from the Sovereign the title of Supreme Head, contained in the oaths prescribed by 28 Hen. VIII. c. 7, c. 10, and 35 Hen. VIII. c. 1, and substituted in the *new* Oath of Supremacy the title of "only Supreme Governor of the realm and of all other her Highness' dominions and countries as well in all spiritual or ecclesiastical things or causes as temporal," but it enlarged rather than narrowed the authority of the Sovereign, as the protector of the faith against heresies and errors, for it not only re-annexed to the Crown all the jurisdictions and privileges, but gave greater facilities for their exercise, by empowering the Crown to appoint, not as Henry had done, a Vicar-General or Vice-gerent, but, after the example of the Letters Patent of Philip and Mary above mentioned, "Commissioners authorized by Letters Patent under the Great Seal to execute all the powers of the Crown touching any ecclesiastical or spiritual jurisdiction within her realms of England and Ireland, or any other her Highness' dominions and countries."

The enactments in 1 Eliz. c. 1, which supply the place of 26 Henry VIII. c. 1, are as follows :—

CLAUSE XVI.

All foreign Spiritual Jurisdiction abolished. “ And to the extent that all usurped and foreign power and authoritie, spirituell and temporall, may for ever bee duely extinguished, and never to be used nor obeied within this realme or any other y^r Ma^{ties} Dominions or Countries. May it please your Highness that it may be further enacted by the auctoritie aforesaid, that no fureine Prynce, Person, Prelate, State, or Potentate, Spirituell or Temporall, shall at any time after the last Daye of this Session of Parliament, use, enjoy, or exercise any manner of Power, Jurisdiction, Superioritie, Auctorite, Preheminence, or Privilege, Spirituell or Ecclesiastical, within this Realme or within any other your Majestie’s Dominions or Countries that now be or hereafter shall be, but from thenceforth the same shall be duely abolished out of the Realme, and all other your Majesty’s dominions for ever, any Statute, ordinance, custome, Constitutions, or any other Matter or Cause whatsoever to the contrary in any wise notwithstanding.

CLAUSE XVII.

All Spiritual Jurisdiction united to the Crown. “ That such jurisdictions, privileges, superiorities, and preheminences, spiritual and ecclesiastical, as by any spiritual or Ecclesiastical Power, or authoritie hath heretofore been or may lawfully be used or exercised for the *Visitation of the Ecclesiastical State and persons*, and for Reformation, order, and correction of the same, and of all manner of errours, heresies, schisms, abuses, offences, contempts, and enormities, shall for ever by authority of this present Parliament be united and annexed to the Imperial Crown of this Realm.”

CLAUSE XVIII.

“And that your Highness, your heirs and your successors, Kings or Queens of this realm, shall have full power and authority, by virtue of this Act, by letters patent under the Great Seal of England, to assign, name, and authorize when and as often as your Highness, your heirs or successors, shall think meet and convenient, and for such and so long time as shall please your Highness your heirs or successors, such person or persons being natural-born subjects to your Highness, your heirs or successors, as your Majesty, your heirs or successors, shall think meet to exercise, use, occupy, and execute under your Highness your heirs and successors all manner of jurisdictions, privileges, and preeminences or any wise touching or concerning any spiritual or ecclesiastical jurisdiction within this your realm of England and Ireland, or any other your Highness’ dominions or countries, and to visit, reform, redress, order, correct, and amend all such known heresies, schisms⁴, abuses, contempts, and enormities whatsoever which by *any manner of spiritual or ecclesiastical power*, authority or jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained, or amended to the pleasure of Almighty God, the increase of virtue, and the conservation of the peace and unity of the realm. And that such person or persons so to be named, assigned, authorized, and appointed by your Highness your heirs or successors after the letters patent to him or them made and delivered as is aforesaid, shall have full power and authority by virtue of this Act and of the said letters patent under your Highness your heirs and successors, to exercise, use, and execute all the premises according to the tenour and

Commissioners may be appointed by the Crown to exercise all Spiritual and Ecclesiastical Jurisdiction.

⁴ “Schisms” are not mentioned in 26 Hen. VIII. c. 1, among the heresies, abuses, and contempts to be reformed.

effect of the said letters patent, any matter or cause to the contrary notwithstanding."

Referring to what has been already stated respecting the Supremacy as exercised by Henry VIII. and asserted in the time of Edward VI., it would appear, that under the former Monarch the whole of the Ecclesiastical jurisdiction, matrimonial and testamentary inclusive, was in the hands of the King's Vicar-General; but that in the reign of Edward it was carried on by the Ordinaries acting in the King's name and under the King's seal. It is however to be remarked that though Henry VIII. appointed his Vicar-General, and assumed to himself the Ecclesiastical jurisdiction in all causes, the Act which conferred on him the title of Supreme Head and all the honours, privileges, jurisdictions, &c., thereto belonging, did not in *express* terms annex to the Crown the *whole* Ecclesiastical jurisdiction, nor give any power but that of repressing errors, &c. In like manner it was not the *whole* Ecclesiastical jurisdiction, but such spiritual power as might be lawfully used for the *visitation of the Ecclesiastical estate and persons*, and for reformation, order, and correction of the same, and of all manner of heresies, &c., which was annexed to the Crown by the 1 Eliz. c. 1 (see clause xvii.), although the words in the eighteenth clause, "any manner of spiritual or Ecclesiastical power," would seem to extend the power of the commissioners to be appointed to *any* cause or

proceeding whatever. Although therefore the Court of High Commission⁵ took cognizance of all matters relative to religious opinions and practices, doctrinal errors and heresies, the jurisdiction of the Bishops, Archdeacons, and other Ordinaries was not superseded, but they held their visitations, received presentments, entertained causes relative to benefices, matrimony, wills, and testaments, and exercised their criminal jurisdiction with a severity, in some cases, as is alleged, approaching that of the Court of High Commission.

By the Irish as by the English Parliament (2 Eliz. c. 1), the jurisdictions, &c., in Ecclesiastical causes were restored to the Crown, the same power granted to establish a Court of High Commission, and the same definition of heresy given, as in England, to guide the judgment of the Commissioners; and such a Court was actually established in Ireland⁶, but whether by any Act of Parliament in Ireland the Court of High Commission was destroyed, as it was in England in 1639, I have not ascertained. The Puritan party suffered so much under the High Commission, that the destruction of that Court, and the protestation against the future erection of any Court with like powers, are considered to have been their

⁵ In an essay prefixed to Hale's *Precedents on Criminal Causes*, published in 1847, fuller mention is made of the proceedings of this Court, p. xlvii.

⁶ Froude's *Reign of Elizabeth*, vol. ii. p. 375.

peculiar triumph. There is, however, reason to believe that the laity in general rejoiced heartily in the relief which was afforded them from the vexatious proceedings of all the Ecclesiastical Courts, as well those of the Archdeacons, as that of the Archbishop himself.

The Court of High Commission, the establishment of which had been authorized by 1 Eliz. c. 1, § 18, above recited, was destroyed by the Act 16 Car. I. c. 11, entitled "An Act for Repeal of a Branch of a Statute primo Elizabethæ concerning Commissioners in Causes Ecclesiastical'." It was not the intention or the effect of this Act to interfere with the lawful jurisdiction of the Ecclesiastical Courts, or to deprive the Crown of any authority which might lawfully be used for the visitation of the Ecclesiastical Estate and persons, and for the reformation, order, and correction of the same, but to prohibit the exercise of that authority by Commissioners, and altogether to prevent offences of Spiritual or Ecclesiastical cognizance being punished by fines, imprisonment, or corporal punishment, either by the Court of High Commission or any Ecclesiastical Court. Spiritual censures, such as Interdict, Suspension *ab ingressu ecclesiæ*, or Excommunication, were the only punishments which were due to spiritual offences, or could be lawfully inflicted by Spiritual Courts; but these Courts, as well as the Court of

⁷ See the Act in the Appendix.

High Commission, had exceeded their powers ; and hence it happened that though they were not involved in the same destruction as the Court of High Commission, or had their jurisdiction in any way curtailed ; yet the change made by this Act in the system of judicature, which forbade any proceedings against accused persons by administering to them the oath *ex officio*, and the severe penalties threatened against ecclesiastical judges who inflicted any but spiritual censures, so paralyzed for a time the power of the Ecclesiastical Courts, that it has been wrongly concluded, that, together with the Court of High Commission, all the regular established Ecclesiastical Courts were also destroyed and closed, whereas the records of all the Courts in Doctors' Commons afford evidence that after the year 1639 they continued to carry on their jurisdiction within the prescribed bounds of law as perfectly as before.

We may remark also, that this Act did not altogether and in every case deprive the Crown of the power of exercising Ecclesiastical jurisdiction by Commissioners. The right of appeal from the Archbishop's Courts to the King in Chancery remained, and consequently the power to appoint Commissioners for hearing that kind of Ecclesiastical causes was not done away, although the judges in the Court of Delegates would be included amongst those, who were forbidden to inflict corporal punishment, fine, and imprisonment.

The purport of the Act (16 Car. I. c. 11) thus stated, its peculiar enactments require no further attention as if they had authority, every part of it, "except what concerns the High Commission Court, or the erection of some such like Court by Commission," having been repealed, and the Act itself replaced by the Act of Charles II. (13 Car. II. c. 12^a).

The provisions of this latter Act are well worthy serious attention; for they have evidently two distinct objects in view: first, that of perpetuating and completing the enactments for the destruction and non-revival of the Court of High Commission; secondly, that of preventing the Supremacy of the Crown and the proper jurisdiction of the Ecclesiastical Courts from being affected by too wide a construction being put upon the previous Act of Charles I. Accordingly, lest the repeal of the eighteenth section of 1 Eliz. c. 1, which was confirmed and continued by this Act, should abridge the authority of the Crown, it was enacted that the Act or any thing therein contained should not be construed "to abridge or diminish the King's Majesty's Supremacy in Ecclesiastical matters and affairs,"—a concession of authority which is immediately followed by a very remarkable provision, that the Act should not be construed to confirm the Canons made in the year 1640, nor any other

^a See the Act in the Appendix.

Ecclesiastical laws and canons not formerly confirmed, allowed, or enacted by Parliament, or by the established laws of the land as they stood in 1639. It would seem as if, without this provision, the preservation in its integrity of the Supremacy, and the recognition (in Clause 1) of the King's Majesty's *Ecclesiastical* laws, as used and practised in this realm, might have been taken to confirm the Canons both of 1603 and also of 1640, which had received the Royal assent under King James and King Charles, and in which the existence and powers of the Court of High Commission were stated and acknowledged.

We have observed above, that though the power of punishing by fine and imprisonment was formally taken away from all the Ecclesiastical Courts, whether those of the Ordinaries or of the High Commission, the Ecclesiastical Courts were not abolished or deprived of their jurisdiction. The terms, however, in which they had been forbidden by 16 Car. 1, c. 11 to inflict punishment were so wide, as to cause a doubt to be entertained whether "all ordinary power of coercion and proceeding in Causes Ecclesiastical were taken away, whereby the ordinary course of justice in Causes Ecclesiastical had been obstructed." To put an end to this doubt, it was declared by the Act of 1660, that the Act of Charles I. did not take away any ordinary power or authority from the Bishops or other persons exercising Ecclesiastical jurisdiction; and

it was also distinctly enacted, that they might exercise all manner of Ecclesiastical jurisdiction and all censures and coercions appertaining to the same before the passing of that Act. A proof this, that the proper exercise of a coercive jurisdiction by Ecclesiastical Courts, is not, as has been averred, repugnant to the spirit or the letter of those Acts of Parliament which one after another abolished the Court of High Commission, and which forbade the erection of any new Court of the like jurisdiction and power.

In illustration of the legal history of the Supremacy of the Crown in matters of Religion, I have to state further, that amongst the endeavours charged against James II. in the Bill of Rights, for subverting and extirpating the Protestant religion and the laws and liberties of this kingdom, one was, "the issuing and causing to be executed a Commission under the Great Seal, for erecting a Court called the Court of Commissioners for Ecclesiastical Causes;" and that it was thereon declared, that "the Commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other Commissions and Courts of like nature, are illegal and pernicious⁹."

I would also observe that since by the Act 1 Will. & Mary, c. 18, no persons can be prosecuted in any Ecclesiastical Court for or by reason

⁹ Statutes of the Realm, vol. vi. pp. 142, 143.

of their nonconforming to the Church of England, the authority of those Courts is limited to those of her Majesty's subjects who are in communion with the Church of England; and further, that by the omission of the words "Supreme Governor" from the Oath of Supremacy, the Crown under King William would seem to have relinquished that specific title, although the Sovereign is still acknowledged to be in all causes Ecclesiastical and Temporal Supreme.

The legal history of the Supremacy of the Sovereign in matters of religion thus set forth, it may be convenient to ascertain distinctly over whom is the Queen thus supreme. The answer is to be found in the terms of the Statute of 1 Eliz., from which we learn that "the Jurisdictions, Privileges, Superiorities, and Pre-eminences, Spiritual and Ecclesiastical, annexed to the Imperial Crown of this Realm, are such, as heretofore have been or may lawfully be exercised or used *for the Visitation of the Ecclesiastical State and Persons*, and for reformation, order, and correction of the same, and of all manner of heresies, schisms, abuses, offences, and enormities." It is then the Ecclesiastical State and Ecclesiastical persons, who are thus subjected to the Crown, that is the Clergy, both in their corporate capacity, as the Ecclesiastical or Third Estate in the kingdom, and also as individuals being Ecclesiastical persons. Whatever were the personal motives of the Sovereigns

of England in the sixteenth century, which induced them to obtain from the Legislature such a recognition of their power over the Clergy, the step was one most probably regarded with favour by the Laity in general, no longer inclined to admit the right of the Church to interfere in temporal affairs, and regarding the exemption of the Clergy from any other but Episcopal correction as an injurious and unjust privilege. The establishment of the King's Supremacy was not only the rejection of foreign jurisdiction, but the establishment of a power within the realm to inquire into the condition, and to amend the errors and defects, of the Ecclesiastical State. I am well aware of the offence which is taken whenever the title of Supreme Head of the Church is given to the Sovereign, and I willingly admit that that title does not belong to the Crown. I would contend, however, that the Sovereign of this country is *de facto* and *de jure* the head of the Ecclesiastical Estate,—of that great body of men, the Clergy of this realm, who are a privileged body, subject to distinct laws, and bound to the performance of peculiar duties. The Parliament of this kingdom is a conference of the Sovereign with the Three Estates, the Lords, the Clergy, and the Commons; and though the Clergy, as the Third Estate have at some times and on some occasions been considered as represented by the Spiritual Lords, the Bishops, still of late years the meetings

of the Convocations of both Provinces have testified to the people at large the position which the Clergy of this country hold as a branch of the English Constitution. True it is, that the Ecclesiastical Estate has no longer the political power and influence which it possessed in former times, when the Crown looked with as much anxiety for the subsidies which were to be granted by the Clergy in their Convocations, as the Government of the country now looks to the House of Commons for granting the annual supplies; and when a liberal subsidy was the return gratefully made to the Sovereign for some extension of the liberties of the Church, or some freedom from the interference of the temporal power. The Ecclesiastical State, however, still exists as a body recognized by the Constitution, with power to consult upon the affairs of the National Church, and upon matters affecting the National Religion, and also to make laws for their own Government, with the permission and approval of the Crown, such laws so made holding a place among the laws of the kingdom, made with the authority of the Crown, though, unless confirmed by the Parliament, binding only those who belong to the Ecclesiastical Estate, i. e. the Clergy.

I have endeavoured to bring into notice the real existence of the Ecclesiastical Estate, as a part of the body politic of the kingdom, because it is in that capacity, as a part of the people, and not

as a purely spiritual body, or as a branch of the Universal Church, that it is subjected to the superintendence and visitation of the Sovereign. It is as men, as Englishmen, that the Clergy are the Sovereign's subjects, bound to obey the Ecclesiastical laws of England, and amenable to the visitation and correction of the Sovereign, if those laws be violated, and their directions disobeyed.

The condition of the whole population of the Empire in respect of the profession of religion has undergone great changes, in the three centuries which have elapsed since the authority of the Crown over the Ecclesiastical Estate was first acknowledged by Parliament, and united for ever to it. At the beginning of the period, only one religion was permitted to be professed, and, indeed, according to the strict interpretation of the law, until the Act of William and Mary had exempted persons from prosecution in the Ecclesiastical Courts for nonconformity, the law required every subject of the Crown to be in the communion of the Church of England, and to profess the national religion. In temporal affairs, every subject, wherever dwelling in the territory of the Crown, is amenable to the English law, and receives its protection; but in the matter of religion, obedience to the English Ecclesiastical law is not required from any persons not of the communion of the Church of England, nor from

any member of the Laity within the communion, under any penalty but that to which he may voluntarily submit.

So long, however, as the Ecclesiastical State exists in England, and so long as there are within the Empire persons whom the law recognizes as Ecclesiastical persons, there is a body which the Sovereign is authorized to visit, and there are persons whom, through the Ecclesiastical jurisdiction, the Sovereign has power to correct and reform according to the Ecclesiastical Law.

This view of the Supremacy, though it be a view according to law, is, I am fully aware, not that which is agreeable to the prejudices and wishes of some of the Clergy; the Laity, however, will see in it a very wise provision of the Legislature for securing to the nation at large the perpetuity amongst us of the National Religion, and of that Protestant Church which is established in the kingdom, and specially committed to the care of the Sovereign. The Ecclesiastical jurisdiction, as annexed to the Crown, interferes not with the profession of religion in general, it cannot be exercised over any persons who do not belong to the Ecclesiastical Estate, nor over any who have not professed and promised to teach certain doctrines, to fulfil certain duties, and to follow certain forms; but if the Ecclesiastical Estate itself, or Ecclesiastical persons were to

set at nought the Ecclesiastical Law, to reject the Articles, alter the worship, and corrupt the Liturgy of our Church, it would be then the duty of the Sovereign to visit the Ecclesiastical Estate and persons, and to correct, reform, and redress the heresies, schisms, and other offences which had been committed.

I have already taken notice of the fact that the allowance of various religions in the State has limited the exercise of the Supremacy to the Ecclesiastic Estate, that is, to the members of our own Church; it remains in the last place to inquire, whether the division of the Empire into Colonial Governments has deprived the Crown of the Supremacy as enforced by the Stat. 1 Elizabeth, and has exempted the Colonial Church from the visitation, superintendence, and protection of the Crown.

According to the theory of our Constitution, provision is made for the temporal and spiritual wants of society, for justice, and for religion. In every county there are magistrates to preserve the peace, in every parish there is a clergyman bound by statute law to reside, and by the obligations of conscience and duty to teach the people. It is the privilege of the Englishman, that the State has regard to all his interests, both of this life and of the next; the question, What is your parish? implies a right to spiritual care as well as temporal relief, nor if, in the present age, the

parochial system fails of conferring all the benefit which it was intended to convey, is the system itself to be blamed, but rather the peculiar changes in society and the rapid increase in the population, which have altered the numerical proportion of the teachers to the taught, and diminished the authority and power of the Clergy. Every inhabitant of a parish has a twofold privilege—he can demand the protection of the justice, and he can demand the service of the parish priest. Neglect on the part of the clergyman is not only a neglect of moral duty, but an offence punishable by Ecclesiastical Law. The submission of the parishioner to be taught by the curate may be a voluntary submission, but the relations of the curate and the parishioner are not mutually voluntary. It is indeed so in all other religious communities; they are in all respects voluntary societies, their members may be tied together by compact, and by opinions which constitute a social obligation, but the Roman Catholic priest and the Sectarian minister are not bound, as the curate of the Church of England is, by law to tend his flock, and if they neglect their duty, however amenable they are to the censure of the society to which they belong, they are not, strictly speaking, amenable to the Law. There is an analogy between the office and duties of the justice of the peace and the curate of the parish; the right which any man has to their services is not from

his voluntary agreement to submit to the law of the country or of the Church, but the consequence of a provision made for his wants, which it is the legal duty and obligation of the justice and the curate to supply. However free every man is in this country to be of any religion, it may be fairly questioned, whether a congregation of parishioners is in the eye of the law a voluntary association like those of the various sects, but rather a society known to the law, and governed not by laws of its own making, but by laws enacted, as all other public laws are, by the authority of the State.

The legal condition of the Church of England in the mother country, thus described, leads us to inquire how far its legal condition is altered in the Colonies and Dependencies of the Crown. It is necessary to premise, that although by the statute law the profession of a belief in the truth of the Christian religion is no longer required as a qualification for admission to office in the State, the Common law remains unaltered, which declares Christianity to be part of the laws of England. Hence it follows that with the Common law Christianity is extended to the Colonies, and the colonists are governed upon Christian principles. There, however, as in England, every man may choose his own religion, and there being opportunity for him of being instructed by the Clergy, he may avail himself of

it or not, as he may please; but though the people may be thus at liberty, not so the Clergy; for as absence from the mother country releases no one from his allegiance to the Crown, nor deprives the Crown of its authority in all temporal causes over its subjects, so neither can the absence of a clergyman from the mother country, or his residence in a colony, release him from obedience to the Sovereign as the Supreme Governor of the Church. Wherever within Her Majesty's dominions the Clergy of the Church of England exist, there the Royal power extends to govern and control them, and to cause them to instruct the people in those doctrines of religion which this Church and Realm have received. This is plain from the tenour of the statute, 1 Eliz. c. 1, § 16, which is *prospective* in its enactment, as excluding all foreign jurisdiction from the future possessions of the Crown, and not being limited to England or Ireland, but embracing in it any other her Highness' dominions and countries. That clause, in abolishing all foreign spiritual jurisdiction, includes not only "the dominions and countries which now be," but those which "hereafter shall be," and hence the inference is plain that it was the intent of the Act to establish the Queen's jurisdiction over Ecclesiastical persons as well in any future possessions of the Crown as in those which then belonged to it. If this interpretation of the Act of Elizabeth be correct,

the Supremacy of the Crown over the Clergy, and the power of governing them, is by it extended to the Colonies, so that the Clergy there are not a voluntary society, but a body amenable to that Ecclesiastical jurisdiction, which has been annexed to the Crown for ever in every part of the Empire, to the exclusion of any foreign jurisdiction, and in order to its being exercised for the protection of the national religion. How this jurisdiction is to be exercised there can be little doubt. Certainly not by a Court of High Commission, for it is forbidden to erect any new Court of that kind, but by the Ecclesiastical Court of the Bishop or the Archdeacon; the right of the Crown so to cause the Ecclesiastical jurisdiction to be exercised throughout the Empire never having, as I believe, been until lately called in question. The idea that an Act of Parliament is necessary to enable the Sovereign to exercise her jurisdiction over Ecclesiastical persons in a colony, seems scarcely less subversive of the prerogative, than the idea that without an Act of Parliament the Sovereign cannot establish temporal authority, or cause justice to be administered in any new colony of the Empire. It does not follow from the fact that because English and Irish dioceses cannot be altered without the authority of Parliament, that therefore the Crown cannot without such authority form and govern the Ecclesiastical State and Clergy in new countries.

It has been indeed suggested that the Queen's power in this matter is affected by the establishment of what are called "Constitutions" in certain Colonies. I have read¹ carefully the Letters Patent of the 2nd of March, 1847, which established a legislative power in the district of Natal, and the instructions of the Privy Council of the 8th of March designating the public officers, who were to compose the Legislative Council. I have also read the Letters Patent of the 15th of July, 1856, which made the district of Natal into a colony, and established a representative Government, by admitting as members of the Legislature a certain number of persons elected by the inhabitants of certain districts, and I have failed to discover in those documents any limitation of the supreme authority of the Crown, as the source of law or justice, or as the Supreme Governor of the Church of England. I have rather been surprised at the want of finality in these charters of liberties and at the reservation made in them, "to ourselves our heirs and successors, of full power and authority, from time to time, as we shall see occasion, to revoke, alter, and amend these presents or any part thereof." As regards legislation in Natal, the powers conferred upon the Colony by the Letters Patent of 1847 or of 1856 do not really differ. In both of them power is given "to make,

¹ Natal Correspondence presented to both Houses, July, 1848, p. 208.

constitute, and order, all such laws and ordinances as may be required and be necessary for the peace, order, and good government of the district and of the colony of Natal;" a proviso being added in the Letters Patent of 1856, "Provided that the same be not repugnant to the laws of England," and power being reserved to the Crown from time to time to disallow any such laws and ordinances. The Officer administering the government under the Letters Patent of 1847, in the enactment of such laws and ordinances was to conform to such orders as were given him in the instructions issued by the Privy Council. There is no evidence in these documents of any abandonment of the Supremacy of the Sovereign in matters of religion in the colony, or of her power to establish a diocese, and to provide for the order and government of members of the Church of England within the colony. On the contrary, it is to be remarked, that the only instruction given by the Privy Council upon the subject of religion would seem to imply, that the Church of England was dominant in the colony, and that persons dissenting from it might be affected by some ordinance made under the powers granted to the Legislative Council, the tenth article of the Instructions of March 8, 1848, being as follows:—"You are expressly enjoined not to propose or assent to any ordinance whatever whereby any person may be impeded or hindered from celebrating or attending

the worship of Almighty God, in a peaceable and orderly manner, although such worship may not be conducted according to the rites and ceremonies of the Church of England." Surely the forbidding legislative interference with Dissent cannot be construed into an abandonment on the part of the Crown of its Supremacy over Ecclesiastical persons, or of its jurisdiction in Ecclesiastical causes affecting the rights and duties of members of the Protestant Church of England as by law established.

It has been admitted as a principle, by the Government of this country, that the Church of England is entitled to her full organization wherever she exists; the term, full organization, implying all that is necessary for doing her work in a lawful and proper manner, under order and command; nor is it complete, unless it be such as the law recognizes and supports—an organization by which the Church becomes subject to, and is regulated by, the supreme power of the law, with an appeal in all Ecclesiastical causes to the Crown. Without the presence of a Bishop having jurisdiction, such organization does not exist, nor, as I would humbly suggest, can the Sovereign refuse jurisdiction to any Bishop without depriving the Church of that legal protection, which results from the annexation of the privileges of the Supremacy to the Crown; the Spiritual jurisdiction being, like the Temporal jurisdiction,

annexed to the Crown, not as an honour or pre-eminence, but as a power to be used and employed for the benefit of the Church and people.

The nature of Ecclesiastical jurisdiction is so little understood, and the contests now carried on in the South African Church have caused so many persons to regard it in an unfavourable view, that I may be permitted to make a few remarks upon it, in order to show its real character, and the interest which the Laity, who are members of our Church, have both in its maintenance and in its submission to the Crown.

The Ecclesiastical jurisdiction in matters of religion by whomsoever exercised, whether by a Bishop, or Archdeacon, or by their Vicars-General, Officials, and Commissaries, consists of two chief duties—visitation and correction. A visitation may appear a formality, as an assemblage of the clergy for no purpose and little profit; the whole of the proceedings, however, are efficient inquiries, whether the Clergy are at their posts, and whether they are doing their duty as the law requires, observing the rites and ceremonies of the Church, and teaching the people in conformity with its doctrines. For performing this important duty of inquiry and inspection, the Bishops and Archdeacons possess Jurisdiction and hold Courts, which have the power, inherent in every court of law, of commanding the attendance of the Clergy, and of such of the Laity, Churchwardens, and others who

have legal duties to perform as officers or servants of the Church. The citation to appear is legal and obligatory, but the Court has in itself no power to enforce the attendance. It has, strictly speaking, no coercive power, although the processes of citation, monition, and pronouncing in contempt may in some sense be called a coercion. For the enforcement of the authority of the Ecclesiastical Court, there is no other course but the invoking the aid of the Court of Chancery, which, in issuing or refusing the writ "*De Contumace Capiendo*," judges of the cause and nature of the contempt. Archdeacons possess the right of holding a Court for visitation and inquiry concerning the Clergy and the Churchwardens, &c.; but their right of holding Courts in causes of Correction has fallen into desuetude, and remains only with the Bishops. Taken as a whole, the Ecclesiastical jurisdiction is of effect, rather as a means of preserving order than of correcting fault, it places the body of the Clergy under inspection, and secures to the Laity the regular performance of religious ministrations. There is no milder, nor at the same time more useful form of government than this, which, interfering with few persons but the Clergy, tends to maintain union and order in an effectual manner.

It is no injury to those who belong to other Religious Communities, that the Church is established by Law, and the Clergy governed by Law ;

but something approaching to injury would certainly be done, if the benefit of legal government were denied to the Church either at home or abroad, because many of her Majesty's subjects prefer to be members of voluntary associations rather than to be in communion with the Established Church. But as to the great body of the Laity, I consider that, anxious as they are for the preservation of the Protestant Church and Protestant faith in this kingdom, it may be satisfactory to them to know, that as there is a Law which the Clergy are bound to obey, there is also a power to compel obedience, and that as each Diocese has its Ordinary, the Bishop, throughout the Empire, so over them all the law of England has established a Supreme Ordinary, in the person of the Sovereign. In Rolle (Abridgment, p. 232), under the title, *Prerogative le Roy*, we read, "*Le Roy puissoit exempter Abbies del visitation del Ordinary, car le Roy est Suprême Ordinary.*" It had been laid down by the Court in *Grendon's case*, 18, 19 Eliz. (Plowden, 498), that the Sovereign is Supreme Ordinary, as having received by the 26 Henry VIII. c. 1, all the power which the Pope had before exercised as Supreme Ordinary; and in the Irish Court (9 J. 1), the same title was given to the Sovereign, as we find in Sir John Davies' Reports, the *Commenda Case*, p. 73. The Lord Romilly also, in a late Judgment, gives this title to the Sovereign.

There is only one other duty or privilege of the Crown as appertaining to the Supremacy, of which it is necessary to take notice, the Election of Bishops, which is inherent in the Crown not by the Statute but by the Common Law. We need not inquire into the origin of the right to nominate to vacant Bishoprics, or attempt to defend that right upon the principle, that Bishoprics are Benefices of Royal Foundation, it is sufficient to state, that without the permission of the Sovereign, no vacancy in the Episcopate could ever be supplied, and that the *Congé d'élire* granted to the Chapter of the Diocese is in exact accordance with this principle. By the Statute of Henry VIII., the permission to elect has been virtually changed into a command to elect the person nominated, so that the form of the proceeding is one thing, the substance of it another, causing a certain amount of scandal and offence. One main object of that Statute must have been the striking at the root of that system of Provision, by which the Pope nominated to vacant Bishoprics. I think, however, that the better acquainted any one is with the quarrels and intrigues, which commonly attended the elections of Bishops in the preceding times, and under circumstances in which the Chapter had a certain freedom of choice, the less will be the desire to see a recurrence of such conduct, such examples of worldly-mindedness and ambition. I distrust the notion of human nature being so improved,

and right feeling being now so dominant, that were the election of the Bishops confided to the Clergy, the whole transaction would be such, as to meet with general approval, leaving behind no heart-burnings and disappointments, no wider separation from each other of those, who differ in religious sentiment or religious belief. I doubt its being to the interest and advancement of religion, that the election of Bishops should be in the hands of the Clergy, much less of Clergy and Laity, or whether Bishops appointed in any other way than the Law now prescribes, would be a body of men superior, in learning, ability, and piety, to those who are now called to the office of a Bishop. The circumstances under which men are brought forward and marked out for that office are as various as all the accidents of human life, and all the means by which the Divine Providence directs the free will of man to certain ends, and yet, by whomsoever the choice of the Bishops is now made, it may be under feelings of responsibility, and even anxiety, far stronger than those which would operate upon electors under the influence of affection, of religious prejudice, and party motives. It is to be observed, that the Supremacy of the Crown in the appointment of Bishops acts in a twofold manner; first, in the nomination of the person to be elected; secondly, in the authority of the Crown over the Archbishops, which prevents them from consecrating a Bishop without the Royal Mandate,

an authority which has been scrupulously maintained in the Statutes which have been enacted in the course of the last century for the extension of the Episcopate in foreign countries, and which, if relinquished, would give to Archbishops and Bishops an uncontrolled power of giving mission to members of the Episcopal Order, and according to their own ideas of duty and necessity founding Episcopal Churches in any part of the globe.

I may further remark that since the authority for the consecration of Bishops comes directly from the Crown, the consent of Parliament cannot be required to place the Church of England under Episcopal Government in countries not already formed by Law into dioceses, and to enable the Crown to govern the Ecclesiastical persons in those countries, the cases in which the Statute Law has interfered to check the exercise of the Prerogative in this matter, being only those in which existing rights are affected, as in the erection of new Dioceses in England, or in the endowment of Bishoprics in the West and East Indies, or the consecration of persons to the Episcopal Office not being British subjects. Upon the principle that no man can be taxed without his consent, Imperial or Colonial Law is required in order to the erection of a Bishopric endowed with public lands or revenues. But such law cannot be required in the case of a Bishop who has no political status, or of a Clergy who have no support

but that which is derived from voluntary gift. If in new countries and Colonies the Sovereign has power, without the authority of Parliament, by Letters Patent granted *ex mero motu*, and revocable at pleasure, to constitute Governors and Councils for civil purposes, and when they have been so constituted to divide anew one country from another, it is difficult to see how the Crown can be prevented from erecting and dividing Colonial dioceses, and giving authority to the Bishops in such countries to govern the Clergy according to the Law of our Church, the Ecclesiastical Courts so erected not being the kind of new Court the erection of which is prohibited by the 16 Car. II., namely, Courts of High Commission.

These various points having been discussed, we may now revert to the original object of our inquiry, the legal relations between the Queen, the Archbishop of the Province of Canterbury, and the South African Bishops, in connexion with important proceedings which have recently taken place before high tribunals. Judgments have of late been given, and dicta uttered, which may lose something of their weight, when the nature of the Queen's Supremacy has been more carefully considered, and the power which it has to combine and direct the exertions and labours of our Bishops and Clergy throughout the Queen's dominions is made plainly to appear. That Supremacy may have been wrongly exercised, and

powers may have been assumed by different parties, which the law had not conferred; but it may not hence follow, that the Sovereign has no jurisdiction, or that the members of our Church are in the Colonies reduced to the condition of a voluntary sect, and deprived of the advantage of being under Bishops and Clergy, who are bound to obey the laws and to adhere to the faith of the Church. It is a sad misfortune that the Bishops of the South African Church should differ from each other in doctrine; this may be only a temporary evil, but the dissolution of all legal ties between the South African and the English Church, the declaring Bishops, Clergy, and people to be bound by no laws but those to which they themselves agree, the conceding to them the power to elect such and so many Bishops as they think fit, and to hold communion with this or that Church and Bishop as they please, are permanent evils of the widest extent, dangerous, in fact, to the South African Church itself, and hurtful, by its example, to the Church at large. The assertion of the Supremacy is, I believe, the true remedy, not indeed for the differences of opinion, but for the disorder and confusion which have taken place. I submit, that as the disputes in ordinary suits, especially in Courts of Equity, commonly arise from the parties having mistaken their legal powers, so it has been in the cases

to which I have alluded. The parties have misunderstood their relations to each other, and have assumed powers not given them by the law. The origin of the troubles in South Africa appear to me distinctly traceable to the illegal adoption in that country of a newly invented precedent for the exercise of Ecclesiastical jurisdiction, and to the creation of a Metropolitan in the person of the Bishop of Capetown. An Act of Parliament (3 & 4 Will. IV. c. 85, A.D. 1833) had created a new Ecclesiastical Office in the Indian territories of the Crown, by constituting the Bishop of Calcutta the Metropolitan Bishop of India, and authorizing him to enjoy all such ecclesiastical jurisdiction and episcopal functions as the Crown by Letters Patent might confer, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury for the time being. The Bishops of Madras and Bombay were directed to take the oath of obedience to the Bishop of Calcutta as Metropolitan, the functions, which they were to exercise, being such as the Crown by Letters Patent might direct and limit. The statute recognized in the fullest manner the Supremacy of the Crown, as the source of all Ecclesiastical jurisdiction, as well as the power of the Crown to confer that jurisdiction to any extent at will, and no doubt the Parliament could create such an office, and empower the Crown to define

its functions and jurisdiction. But, unfortunately, without the authority of Parliament, the Crown granted Letters Patent to the Bishop of Capetown, constituted him a Metropolitan, and submitted the Bishops of Grahamstown and Natal to his jurisdiction. In the execution of his Office the Metropolitan proceeded to make Canons, and afterwards to cite before him and to deprive the Bishop of Natal; the Canons being a nullity, because made without the consent of the Crown, as required by the Act of Submission; and the citation of the Bishop and his deprivation a nullity, because the Letters Patent creating a Metropolitan with jurisdiction were null also. Under these circumstances, although the Bishop of Capetown has had the dignity of a Metropolitan conferred upon him, it would appear that he has no jurisdiction over any other Bishop, and that all the Bishops of South Africa are equal in authority and status, and Suffragans of the Archbishop of Canterbury, by whom they were consecrated.

I have termed the Metropolitanship of India a new Ecclesiastical office, and a newly invented precedent for the exercise of Ecclesiastical jurisdiction, and I have so done because, having consulted some of the best authorities upon such subjects, I believe, that throughout the whole Western Church no instance can be found of a Prelate bearing only the title of Metropolitan, having jurisdiction over other Bishops, and being

himself subject to the superintendence and revision of an Archbishop. An instance or two may be found of a Prelate bearing the title of Archbishop, and having no Bishops under him, but there is no instance of Bishops subject to any but Archbishops.

The fact, however, that the Sovereign has been empowered by Act of Parliament to create Metropolitans in certain places, would show that the time is come for dividing the Colonial Empire into Ecclesiastical Provinces, and constituting in them Archbishops, subject, as the English and Irish Archbishops are, immediately to the Crown.

The annals of the Gallican Church furnish two very interesting precedents of the erection of Bishoprics into Archbishoprics and subdividing Provinces. The Archbishopric of Paris was erected in place of the Bishopric, and separated from the Archbishopric of Sens, and the four dioceses, Paris, Chartres, Orleans, and Meaux, erected into a new Province in 1622. The instruments which effected this were a Bull of Pope Gregory XV., 20 Oct., 1622, Letters Patent of Louis XIII. in Feb. 1623, and an Arrêt of the Parliament of Paris of Aug. 8, 1623 (*Mémoires du Clergé*, vol. ii. p. 46). The Bishopric of Alby in Languedoc was in a similar manner made into an Archbishopric by separation from the Archbishopric of Bourges. The proposition seems to have originated with Louis XIV. in 1674, and been agreed upon by the Archbishop and

the Bishop, the Archbishop consenting to relinquish six dioceses — Alby, Castres, Mendes, Cahors, Rhodéz, and Vabres. This agreement being solemnly made in 1675, was confirmed by a Bull of Pope Innocent XI. in 1678, and by the Letters Patent of the King enrolled in the Parliament of Toulouse in 1680 (*ib. ii. p. 79*).

In the Churches of the Roman Catholic communion these changes are made under the authority of the Pope, but if, according to the dicta of our judges, all the powers which the Pope exercises abroad are vested in the Sovereign as the Supreme Ordinary, it would follow, that even without an Act of Parliament the Sovereign might create Archbishoprics and form Provinces, and give to the Churches in the Colonies the whole benefit of Constitutional Government according to the English Ecclesiastical Law. An examination of the state of Episcopacy all over the world, as it is portrayed in Ferraris' *Bibliotheca Canonica*, verb. "Episcopatus," and other Canon Law writers, will show that many Archbishoprics exist having as few as three or four Suffragan Bishops under them, so that the example of the Archbishopric of York, as a Province containing but a few Bishops, is not uncommon; and if by our modern legislation we have made Metropolitans having under them two or three Bishops, there seems nothing to prevent their being made Archbishops, and giving to the Clergy of the Colonial Provinces

authority to make such Canons as are needed, with the same consent from the Crown as is required for making Canons in the Provinces of the United Church of England and Ireland, thus securing uniformity of doctrine and discipline in all the Churches of our Communion throughout the Queen's dominions.

The purport for which the foregoing pages were compiled had reference to the condition of the Anglican Church rather abroad than at home, and to the assertion of a principle of the English Constitution,—the authority and duty of the Sovereign to govern the Clergy of the Church of England throughout the Empire. I was induced to study this question, and to invite attention to it, by the conviction, that the withdrawal of that temporal power and superintendence over the Church, which constitutes the Supremacy, would tend to evil rather than to good; and that, if it did not at once cause the confusion incident to anarchy, it would eventually subject the Church to the dominion of a Priesthood. I hear much in the present day of desires to unite the Laity and the Clergy. As respects a spiritual bond of union between them, I cannot conceive any union closer, than that by which they are already united by common worship, common prayer, and by all the offices of religion and of charity; nor, as respects the external government of the Church and the main-

tenance of the religion established in this kingdom, is there any union of the Laity with the Clergy better calculated to secure that object, than that which already exists in the Supremacy of the Crown, and which enables the Sovereign of this country to combine in concert, as occasion requires, the ablest members of our Church, of all ranks, of the Laity as well as of the Clergy, and to require from them their solemn judgment and advice. That power was lately exercised in the Royal Commission, which considered the question of Clerical Subscription, and it is now again called into action by a fresh Commission. And it being not improbable, that some persons may be disposed to doubt the propriety of the Crown's interference in questions, which they may regard as matters of purely spiritual cognizance, whilst others may not be aware what Acts of Supremacy the Sovereigns of the kingdom have exercised over the Church since the time of our national renunciation of the authority of the See of Rome, I have thought it advisable, by means of an Index to the contents of Bishop Wilkins' fourth volume of the "*Concilia Britanniae Magnae et Hiberniae*" (which immediately follows), to bring into notice the numerous occasions on which our Church has been governed, corrected, counselled, advised, or encouraged by our Sovereigns, acting sometimes in their own names, at others by the advice of their Counsellors, and though occasionally ill

advised, yet in the greater majority of cases proposing that which was wise and good, promoting unity and peace, and tending to the establishment of the true faith, and the promotion of religion. The history of our Church has been with me for a very long series of years a branch of study, as well as a subject of contemplation. As I am more and more confirmed in the belief, that the knowledge of the pure religion of Jesus Christ, as professed and accepted in our Protestant Established Church, as well as the preservation of it in this kingdom, has been and is the special gift of God to this nation, so also my fears are increased, lest our habitual undervaluing it should cause Him to deprive us of it, and to suffer us to mistake darkness for light and error for truth. The labours of the Laity were most efficient for the establishing the Church in this kingdom upon the principles of the Reformation; let us pray that they may in this age be, as before, united with the endeavours of the Clergy to preserve the people from relapsing into ignorance and superstition.

An Index to the Series of Acts of the Sovereigns, from the Reign of Elizabeth to George I. (recorded in the fourth volume of Wilkins' Concilia), which illustrate the Exercise of the Supremacy of the Crown in Matters of Religion.

1. Injunctions given by the Queen's Majesty, concerning both the Clergy and Laity of this Realm, published Anno Domini 1559, being the First Year of the Reign of our Sovereign Lady Queen Elizabeth. P. 184.

2. Articles to be inquired in the Visitation in the First Year of the Reign of our most dread Sovereign Lady Elizabeth, by the Grace of God of England, France, and Ireland Queen, Defender of the Faith, 1559. P. 189.

3. Commissio Regia Visitatoribus suis in Partibus Borealibus. P. 193.

4. Advertisements, partly for due Order in the Publick Administration of Common Prayer and using the Sacraments, and partly for the Apparell of all Persons Ecclesiastical, by virtue of the Queen's Majesty's Letters commanding the same, the 25th day of January, in the Seventh Year of the Reign of our Sovereign Lady Elizabeth, by the Grace of God of England, France, and Ireland Queen, Defender of the Faith. P. 247.

5. Letter of the Council to the Archbishop of Canterbury about the recovering the Discipline of the Church. P. 256.

6. Queen Elizabeth's Letter to the Archbishop for Uniformity in Church Matters. P. 262.

7. Letter from the Council about Uniformity and a Parochial Visitation. P. 279.

8. The Council's Letter to the Archbishop of Canterbury about the Observation of Ember days and Lent. P. 288.

9. Queen Elizabeth's Letter to the Bishops throughout England against Conventicles, and for the suppressing the Exercise called Prophesying. P. 289.

10. A Proclamation against the Sectaries of the Family of Love. P. 297.

JAMES I.

11. *Dispensatio cum Georgio Archiepiscopo Cantuariensi super Irregularitate.* P. 462.

12. *The King's Letter to the Archbishop of Canterbury concerning Preachers and Preaching.* P. 465.

13. *The King's Letter to the Archbishop of Canterbury concerning Recusants.* P. 470.

CHARLES I.

14. *A Commission to sequester Archbishop Abbot from all his Ecclesiastical Offices and Jurisdiction.* P. 474.

15. *The King's Instructions for William, Lord Archbishop of Canterbury, concerning certain Orders to be observed and put in execution by the several Bishops of his Province.* P. 480.

16. *An Order of Council for placing the Communion Table in St. Gregory's Church.* P. 482.

17. *Litteræ Patentes pro Visitatione locorum Exemptorum.* P. 532.

CHARLES II.

18. *His Majesty's Declaration to all his loving Subjects of his Kingdom of England and Dominion of Wales, concerning Ecclesiastical Affairs.* P. 560.

19. *Letters to the Archbishop of Canterbury concerning some Abuses in the Church.* P. 576.

JAMES II.

19*. *The King's gracious Declaration to all his loving Subjects for Liberty of Conscience (dispensing with the Oaths of Supremacy and Allegiance, &c.).* P. 614.

WILLIAM III.

20. *Injunctions given by the King's Majesty to the Archbishops of this Realm, to be communicated by them to the Bishops and the rest of the Clergy.* P. 624.

21. *Directions to our Archbishops and Bishops, for the preserving of Unity in the Church and the Purity of the Christian Faith concerning the Holy Trinity.*

QUEEN ANNE.

22. The Queen's Licence and Heads of Business to the Convocation. P. 638.

23. Answer of the Queen, with the Opinions of the Judges, concerning the Power of Convocation. P. 648.

24. The Queen's Letter to the Convocation about Business for them. P. 654.

GEORGE I.

25. Directions to our Archbishops and Bishops for the preserving of Unity in the Church, &c. P. 666.

26. The King's Letter to the Convocation about Business for them. P. 667.

APPENDIX.

OATHS OF SUPREMACY AND ALLEGIANCE.

28 HEN. VIII. c. 10, § 6.

Oath to be taken by all Officers Ecclesiastical and Temporal for renouncing all Jurisdiction of the See of Rome, and for supporting the King's Supremacy.

AND for stronger defence and maintenance of this Act, it is ordained and enacted by authority aforesaid, that all and every Ecclesiastical Judge Ordinary, Chancellor, Commissary, Official, Vicar-General, or other Ecclesiastical Officer or Minister, of what dignity, preheminance, or degree soever they shall be, and all and every Temporal Judge, Justiciar, Mayor, Bailiff, Sheriff, Under-sheriff, Escheator, Jurate, Constable, Headborow, Thredborough, Rorsolder, and any other Lay Officer and Minister, to be made, enacted, or admitted within this Realm, or any other the King's Dominions, of what estate, order, degree, or condition soever he shall be, from and after the last said day of July, shall before he take upon him the execution of such office, make, take, and receive, a corporal oath upon the Evangelists before such person or persons as have, or shall have, authority to admit him, that he from henceforth shall utterly renounce, refuse, relinquish, or forsake the Bishop of Rome and his authority, power, and jurisdiction; and that he never shall consent or agree that the Bishop of Rome shall practise, exercise, or have any manner of authority, jurisdiction, or power within the Realm, or any other the King's Dominions, but that he shall resist the same at all times to the uttermost of his power; and that from henceforth he shall *accept, repute, and take the King's Majesty to be the only supreme head on earth of the Church of England*, and that to his cunning, wit, and utmost of his power, without guile, fraud, or other undue means, he shall observe, keep, maintain, and defend the whole effects and contents of all and singular Acts and Statutes made

and to be made within this realm in derogation, extirpation, and extinguishment of the Bishop of Rome and his authority, and all other Acts and Statutes made and to be made *in reformation and corroboration of the King's power of supreme head on earth of the Church of England*, and this he shall do against all manner of persons of what estate, dignity, degree, or condition they be, and in no wise do, nor attempt, nor to his power suffer to be done or attempted, directly or indirectly, any thing or things privily or apertly to the let, hindrance, damage, or derogation thereof, or of any part thereof, by any manner of means, or for any manner of pretence; and in case any oath be made or hath been made by him to any person or persons in maintenance, defence, or favour of the Bishop of Rome, or his authority, jurisdiction, or power, he repute the same as vain and annihilate. So help him God, all Saints, and the Holy Evangelists.

35 HEN. VIII. c. 1, § 7.

Oaths required by 28 Hen. VIII. c. 7, and by 28 Hen. VIII. c. 10. Insufficiency thereof. Form of the oath hereby required.

I, A. B., having now the vail of darkness of the usurped power, authority, and jurisdiction of the See and Bishop of Rome clearly taken away from my eyes, do utterly testify and declare on my conscience, that neither the See nor the Bishop of Rome, nor any foreign Potentate, hath, nor ought to have any jurisdiction, power, or authority within this Realm, neither by God's law nor by any other just law or means, and though by sufferance and abusions in times passed they aforesaid have usurped and vindicated a feigned and unlawful power and jurisdiction within this Realm which hath been supported till few years passed, therefore because it might be deemed and thought thereby that I took or take it for just or good, I therefore now do clearly and frankly renounce, refuse, relinquish, and forsake that pretended authority, power, and jurisdiction both of the See and Bishop of Rome, and of all other foreign powers, and that I shall never consent nor agree that the foresaid See or Bishop of Rome, or any of their successors shall practise, exercise, or have any manner of authority, jurisdiction, or power within

this Realm, or any other the King's Realms or Dominions, nor any foreign Potentate, of what estate, degree, or condition soever he be, but that I shall resist the same at all times to the uttermost of my power, and that I shall bear faith, truth, and true allegiance to the King's Majesty, and to his heirs and successors declared, or hereafter to be declared, by authority of the Act made in the session of the Parliament holden at Westminster the fourteenth day of January in the five and thirtieth year, and in the said Act made in the xxviiiith year of the King's Majesty's reign, and that I shall accept, repute, and take the King's Majesty his heirs and successors, when they or any of them shall enjoy his place, *to be the only supreme head on earth under God of the Church of England and Ireland, and of all other his Highness' Dominions*, and that with my body, cunning, wit, and uttermost of my power, without guile, fraud, or other undue mean, I shall observe, keep, maintain, and defend all the King's Majesty's states, titles, and rights, with the whole effects and contents of the Acts provided for the same, and all other Acts and Statutes made or to be made within the Realm in and for that purpose, and the derogation, extirpation, and extinguishment of the usurped and pretended authority, power, and jurisdiction of the See and Bishop of Rome and all other foreign Potentates as afore ; and also as well the said Statute made in the said xxviii. year as the Statute made in the said session of the Parliament holden the xxxv. year of the King's Majesty's reign for the establishment and declaration of his Highness successor, and all Acts and Statutes made and to be made in confirmation and corroboration of the King's Majesty's power and supremacy on earth of the Church of England and of Ireland, and other his Grace's Dominions. I shall also defend and maintain with my body and goods, and with all my wit and power, and this I shall do against all manner of persons of what estate, dignity, degree, or condition they be, and in no wise do nor attempt, nor to my power suffer or know to be done or attempted, directly or indirectly, any thing or things privily or apertly to the let, hindrance, damage, or derogation of any of the said Statutes, or any part of them, by any manner of means, or for or by any manner of pretence ; and in case any oath hath been made by

me to any person or persons in maintenance, defence, or favour of the See and Bishop of Rome, or his authority, jurisdiction, or power, or against any the Statutes aforesaid, I repute the same as vain and annihilate, and shall wholly and truly observe and keep this Oath. So help me God, all Saints, and the holy Evangelists.

THE OATH OF THE KING'S SUPREMACY.

In the form of Making and Consecrating Archbishops, Bishops, Priests, and Deacons, 1549.

I from henceforth shall utterly renounce, refuse, relinquish, and forsake the Bishop of Rome, and his authority, power, and jurisdiction. And I shall never consent nor agree, that the Bishop of Rome shall practise, exercise, or have any manner of authority, jurisdiction, or power within this Realm or any other the King's dominions, but shall resist the same at all times to the uttermost of my power. And I from henceforth will accept, repute, and take the King's Majesty to be the only Supreme Head in earth of the Church of England; and to my cunning, wit and uttermost of my power, without guile, fraud, or other undue mean, I will observe, keep, maintain, and defend the whole effects and contents of all and singular Acts and Statutes made and to be made within this Realm in derogation, extirpation, and extinguishment of the Bishop of Rome and his authority, and all other Acts and Statutes made or to be made in reformation and corroboration of the King's power of the Supreme Head on earth of the Church of England. And this I will do against all manner of persons, of what estate, dignity, or degree, or condition they be, and in no wise do, nor attempt, nor to my power suffer to be done or attempted, directly or indirectly, any thing or things, privily or apertly, to the let, hinderance, damage or derogation thereof, or any part thereof, by any manner of means, or for any manner of pretence. And in case any other be made, or hath been made by me to any person or persons in maintenance, defence, or favour of the Bishop of Rome, or his authority, jurisdiction,



me to any person or persons in maintenance, defence, or favour of the See and Bishop of Rome, or his authority, jurisdiction, or power, or against any the Statutes aforesaid, I repute the same as vain and annihilate, and shall wholly and truly observe and keep this Oath. So help me God, all Saints, and the holy Evangelists.

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this Realm, or any other the King's Realms or Dominions, nor any foreign Potentate, of what estate, degree, or condition soever he be, but that I shall resist the same at all times to the uttermost of my power, and that I shall bear faith, truth, and true allegiance to the King's Majesty, and to his heirs and successors declared, or hereafter to be declared, by authority of the Act made in the session of the Parliament holden at Westminster the fourteenth day of January in the five and thirtieth year, and in the said Act made in the xxviiith year of the King's Majesty's reign, and that I shall accept, repute, and take the King's Majesty his heirs and successors, when they or any of them shall enjoy his place, *to be the only supreme head on earth under God of the Church of England and Ireland, and of all other his Highness' Dominions*, and that with my body, cunning, wit, and uttermost of my power, without guile, fraud, or other undue mean, I shall observe, keep, maintain, and defend all the King's Majesty's states, titles, and rights, with the whole effects and contents of the Acts provided for the same, and all other Acts and Statutes made or to be made within the Realm in and for that purpose, and the derogation, extirpation, and extinguishment of the usurped and pretended authority, power, and jurisdiction of the See and Bishop of Rome and all other foreign Potentates as afore; and also as well the said Statute made in the said xxviiith year as the Statute made in the said session of the Parliament holden the xxxvth year of the King's Majesty's reign for the establishment and declaration of his Highness' successor, and all Acts and Statutes made and to be made in confirmation and corroboration of the King's Majesty's power and supremacy on earth of the Church of England and of Ireland, and other his Grace's Dominions. I shall also defend and maintain with my body and goods, and with all my wit and power, and this I shall do against all manner of persons of what estate, dignity, degree, or condition they be, and in no wise do nor attempt, nor to my power suffer or know to be done or attempted, directly or indirectly, any thing or things privily or openly to the let, hindrance, damage, or derogation of any of the said Statutes, or any part of them, by any manner of means, or for or by any manner of persons; and in case any such shall be made by

me to any person or persons in maintenance, defence, or favour of the See and Bishop of Rome, or his authority, jurisdiction, or power, or against any the Statutes aforesaid, I repute the same as vain and annihilate, and shall wholly and truly observe and keep this Oath. So help me God, all Saints, and the holy Evangelists.

THE OATH OF THE KING'S SUPREMACY.

In the form of Making and Consecrating Archbishops, Bishops, Priests, and Deacons, 1549.

I from henceforth shall utterly renounce, refuse, relinquish, and forsake the Bishop of Rome, and his authority, power, and jurisdiction. And I shall never consent nor agree, that the Bishop of Rome shall practise, exercise, or have any manner of authority, jurisdiction, or power within this Realm or any other the King's dominions, but shall resist the same at all times to the uttermost of my power. And I from henceforth will accept, repute, and take the King's Majesty to be the only Supreme Head in earth of the Church of England; and to my cunning, wit and uttermost of my power, without guile, fraud, or other undue mean, I will observe, keep, maintain, and defend the whole effects and contents of all and singular Acts and Statutes made and to be made within this Realm in derogation, extirpation, and extinguishment of the Bishop of Rome and his authority, and all other Acts and Statutes made or to be made in reformation and corroboration of the King's power of the Supreme Head on earth of the Church of England. And this I will do against all manner of persons, of what estate, dignity, or degree, or condition they be, and in no wise do, nor attempt, nor to my power suffer to be done or attempted, directly or indirectly, any thing or things, privily or apertly, to the let, hinderance, damage or derogation thereof, or any part thereof, by any manner of means, or for any manner of pretence. And in case any other be made, or hath been made by me to any person or persons in maintenance, defence, or favour of the Bishop of Rome, or his authority, jurisdiction,

or power, I repute the same as vain and annihilate. So help me God [¹ all Saints and the holy Evangelists].

1 ELIZ. c. 1.

Oath of Supremacy of the Crown to be taken by Archbishops, Bishops, Judges, and all Ministers and Officers Spiritual and Temporal. I, *A. B.*, do utterly testify and declare on my conscience that the Queen's Highness is the only Supreme Governor of the Realm, and of all other her Highness' dominions and countries, as well in all Spiritual or Ecclesiastical things or causes as Temporal, and that no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority Ecclesiastical or Spiritual, within this Realm; and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities, and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the Queen's Highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, preheminences, privileges, and authorities granted or belonging to the Queen's Highness her heirs and successors, or united or annexed to the Imperial Crown of this Realm. So help me God and the contents of this Book.

OATH OF ALLEGIANCE. 3 JAMES I. c. 4.

I, *A. B.*, do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our Sovereign Lord King James is lawful and rightful King of this Realm, and of all other his Majesty's dominions and countries; and that the Pope neither of himself or by any authority of the Church or See of Rome, or by any other means with any other, hath power or authority to depose the King, or to dispose of any of his Majesty's kingdoms or dominions, or to authorize any foreign prince to invade or annoy him or his countries, or

¹ Omitted in the Service Book, 1552.

to discharge any of his subjects of that allegiance and obedience to his Majesty, or to give licence or leave to any of them to bear arms, raise tumults, or to offer any violence or hurt to his Majesty's royal person, state, or government, or to any of his Majesty's subjects within his Majesty's dominions. Also I do swear from my heart, that notwithstanding any declaration or sentence of excommunication or deprivation made or granted, or to be made or granted, by the Pope or his successors, or by any authority derived or pretended to be derived from him or his See against the said King, his heirs or successors, or any absolution of the said subjects from that obedience, I will bear faith and true allegiance to his Majesty, his heirs and successors, and him and them will defend to the utmost of my power against all conspiracies and attempts whatsoever, which shall be made against this or their persons, their crown and dignity, by reason or colour of any such sentence or declaration or otherwise, and will do my best endeavour to disclose and make known unto his Majesty, his heirs and successors, all treasons and traitorous conspiracies which I shall know or hear of, to be against him or any of them.

And I do further swear, that I do from my heart abhor, detest, and abjure as impious and heretical this damnable doctrine and position, that princes which be excommunicated or deprived by the Pope may be deposed or murdered by their subjects or any other whatsoever. And I do believe, and on my conscience am resolved, that neither the Pope or any other person whatsoever hath power to absolve me of this oath or any part thereof, which I acknowledge by good and full authority to be lawfully ministered unto me, and do renounce all pardons and dispensations to the contrary. And these things I do plainly and sincerely acknowledge and swear according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation or mental evasion or secret reservation. And I do make this recognition and acknowledgment heartily, willingly, and truly upon the true faith of a Christian. So help me God.

1 WILL. AND MARY, c. 8, § 12.

I, A. B., do sincere promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary. So help me God.

I, A. B., do sweare that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the Pope or any authority of the See of Rome, may be deposed or murdered by their subjects or any other whatsoever.

And I do declare that no foreign prince, person, prelate, state, or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, Ecclesiastical or Spiritual, within this Realm. So help me God, &c.

 ACTS OF PARLIAMENT.

25 HEN. VIII. c. 19.

An Act for the Submission of the Clergy to the King's Majesty.

Acknowledgment and Petition by the Clergy with respect to Ecclesiastical Constitutions and the examination of them.	When the King's humble and obedient subjects, the Clergy of this Realm of England have not only knowledged according to the truth that the Convocations of the Clergy is, always hath been, and ought to be assembled only by the King's writ, but also submitting themselves to the King's Majesty, hath promised <i>in verbo sacerdotii</i> that they will never from henceforth presume to attempt, allege, claim, or put in use, or exact, promulge, or execute any new Canons, Constitutions, Ordinances, provincial or other, or by whatsoever other name they shall be called in the Convocation, unless the King's most Royal assent and licence may to them be had to make, promulge, and execute the same, and that His Majesty do
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give his most Royal assent and authority in that behalf. And when diverse Constitutions, Ordinances, and Canons, provincial or synodal, which heretofore have been enacted, and be thought not only to be most prejudicial to the King's Prerogative Royal, and repugnant to the laws and statutes of this Realme, but also over much onerous to his Highness and his subjects, the said Clergy hath most humbly besought the King's Highness that the said Constitutions and Canons may be committed to the examination and judgment of his Highness, and of xxxii. persons of the King's subjects, whereof xvi. to be of the Upper and nether House of the Parliament of the temporaltie, and the other xvi. to be of the Clergy of this Realme, and all the said xxxii. persons to be chosen and appointed by the King's Majesty, and that such of the said Constitutions and Canons as shall be thought and determined by the said xxxii. persons, or the more part of them, worthy to be abrogated and annulled, shall be abolyte and made of no value accordingly, and such other of the same Constitutions and Canons as by the said xxxii. persons, or the more part of them, shall be approved to stand with the laws of God and consonant to the laws of this Realm, shall stand in their full strength and power, the King's most Royal assent first had and obtained to the same. Be it therefore now enacted by authority of this present Parliament, according to the said submission and petition of the said Clergy, that they nor any of them from henceforth shall presume to attempt, allege, claime, or put in use any Constitutions or Ordinances, provincial or synodal, or any other Canons, nor shall exact, promulge, or execute any such Canons, Constitutions, or Ordinance provincial, by whatsoever name or names they may be called in their Convocations in time coming, which alway shall be assembled by authority of the King's writ, unless the same Clergy may have the King's most Royal assent and licence to make, promulge, and execute such Canons, Constitutions, and Ordinances, provincial or synodal, upon pain of every one of the said Clergy doing contrary to this Act, and being thereof convict, to suffer punishment and make fine at the King's will.

26 HEN. VIII. c. 1.

An act concernynge the Kynges Highness to be Supreme Head of the Church of England, and to have Authority to reform and redress all Errours and Abuses in the same.

The King shall be reputed Supreme Head of the Church of England, and shall correct all Heresies and Offences. Albeit the King's Majesty justly and rightfully is and oweth to be the Supreme Head of the Church of England, and so is recognized by the Clergy in their Convocations, yet nevertheless for corroboration and confirmation thereof, and for increase of virtue in Christ's religion within this Realm of England, and to repress and extirpe all errors, heresies, and other enormities and abuses heretofore used, in the same, Be it enacted by authority of this present Parliament that the King our Sovereign Lord, his heirs and successors, Kings of this Realm shall be taken, accepted, and reputed the only Supreme Head on Earth of the Church of England called *Anglicana Ecclesia*, and shall have and enjoy, annexed and united to the Imperial Crown of this Realm, as well the title and style thereof, as all honours, dignities, preheminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of Supreme Head of the same Church belonging and appertaining: And that our said Sovereign Lord, his heirs and successors, Kings of this Realm, shall have full power and authority from time to time to visit, repress, redress, reform, order, correct, restrain, and amend all such errors, abuses, offences, contempts, and enormities whatsoever they be, which by any manner, spiritual authority, or jurisdiction, ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservancy of the peace, unity, and tranquillity of this Realm, any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding.

16 CAR. I. C. 11 (1), A.D. 1640.

A Repeal of the Branch of a Statute Primo Elizabethæ concerning Commissioners for Causes Ecclesiastical.

Whereas in the Parliament holden in the first year of the reign of the late Queen Elizabeth², late Queen of England, there was an Act made and established, intituled "An Act restoring to the Crown the ancient Jurisdiction over the State Ecclesiastical and Spiritual, and abolishing all foreign Power repugnant to the same," in which Act, amongst other things, there is contained one clause, branch, article, or sentence, whereby it was enacted to this effect; namely, that the said late Queen's Highness, her heirs and successors, Kings or Queens of this Realm, should have full power and authority by virtue of that Act, by letters patents under the Great Seal of England, to assign, name, and authorize, when and as often as her Highness, her heirs and successors, should think meet and convenient, and for such and so long time as should please her Highness, her heirs, or successors, such person or persons being natural-born subjects to her Highness, her heirs and successors, as her Majesty, her heirs and successors, should think meet to exercise, use, occupy, and execute under her Highness and successors, all manner of jurisdictions, privileges, and pre-eminence, in any wise touching or concerning any Spiritual or Ecclesiastical Jurisdiction within these her realms of England and Ireland, or any other her Highness' dominions and countries, and to visit, reform, redress, order, correct, and amend all such errors, heresies, schisms, abuses, offences, contempts, and enormities whatsoever, which by any manner of spiritual or ecclesiastical power, authority, or jurisdiction, can or may lawfully be reformed, ordered, redressed, corrected, restrained, or amended, to the pleasure of Almighty God, the increase of virtue, and the conservation of the peace and unity of this Realm, and that such person or persons, so to be named, assigned, and authorized and appointed by her Highness, her heirs or successors, after the said letters patents to him or them

² 1 Eliz. c. 1, § 18.

made and delivered as aforesaid, should have full power and authority by virtue of that Act, and of the said letters patents under her Highness, her heirs or successors, to exercise, use, and execute all the premises, according to the tenour and effect of the said letters patents ; any matter or cause to the contrary in any wise notwithstanding.

High Commission Court. II. And whereas by colour of some words in the aforesaid branch of the said Act, whereby Commissioners are authorized to execute their commission according to the tenour and effect of the King's letters patents, and by letters patents grounded thereupon, the said Commissioners have, to the great and insufferable wrong and oppression of the King's subjects, used to fine and imprison them, and to exercise other authority not belonging to Ecclesiastical Jurisdiction restored by that Act, and divers other great mischiefs and inconveniences have also ensued to the King's subjects, by occasion of the said branch and Commissions issued thereupon, and the executions thereof : therefore, for the repressing and preventing of the aforesaid abuses, mischiefs, and inconveniences in time to come :

The said Branch of Eliz. c. 1 repealed. III. Be it enacted by the King's most excellent Majesty and the Lords and Commons in this present Parliament assembled, and by the authority of the same, that the aforesaid branch, clause, article, or sentence contained in the said Act, and every word, matter, and thing contained in that branch, clause, article, or sentence, shall from henceforth be repealed, annulled, revoked, annihilated, and utterly made void for ever ; any thing in the said Act to the contrary in any wise notwithstanding.

Powers taken away from Archbishops, Bishops, and other Ecclesiastical Persons and Courts. IV. And be it also enacted, by the authority aforesaid, that no Archbishop, Bishop, nor Vicar-General, nor any Chancellor, Official, nor Commissary of any Archbishop, Bishop, or Vicar-General, nor any Ordinary whatsoever, nor any other Spiritual or Ecclesiastical Judge, Officer, or Minister of Justice, nor any other person or persons whatsoever, exercising Spiritual or Ecclesiastical Power, Authority,

or Jurisdiction, by any grant or licence of the King's Majesty, his heirs or successors, or by any power or authority derived from the King, his heirs or successors, or otherwise, shall from and after the first day of August which shall be in the year of our Lord God one thousand and six hundred forty and one, award, impose, or inflict any pain, penalty, fine, amerciamment, imprisonment, or other corporal punishment upon any of the King's subjects for any contempt, misdemeanour, crime, offence, matter, or thing whatsoever belonging to spiritual or ecclesiastical cognizance or jurisdiction, or shall *ex officio* or at the instance or promotion of any other person whatsoever urge, enforce, tender, give, or minister unto any Churchwarden, Sideman, or other person whatsoever, any corporal oath whereby he or she shall or may be charged or obliged to make any presentment of any crime, offence, delinquency, or misdemeanour, or any neglect, matter, or thing whereby or by reason whereof he or she shall or may be liable or exposed to any censure, pain, penalty, or punishment whatsoever, upon pain and penalty that every person who shall offend contrary to this statute shall forfeit and pay treble damages to every person

Penalty.—Treble Damages and One Hundred Pounds.

thereby aggrieved, and the sum of one hundred pounds to him or them who shall first demand and sue for the same, which said treble damages and sum of one hundred pounds shall and may be demanded and recovered by action of debt, bill, or plaint in any Court of Record, wherein no privilege, essoin, protection, or wager of law shall be admitted or allowed to the defendant. And be it further enacted, that every person who shall be once convicted of any act or offence prohibited by this statute, shall for such act or offence be from and after such conviction utterly disabled to be or continue in any office or employment in any Court of Justice whatsoever, or to exercise or execute any power, authority, or jurisdiction by force of any Commission or letters patents of the King, his heirs or successors.

V. And be it further enacted, That from and after the said first day of August, no new Court shall be erected, ordained, or appointed, within this Realm of England or Dominion of Wales, which shall or may

No new Court to be erected with like Power.

have the like power, jurisdiction, or authority as the said High Commission Court now hath, or pretendeth to have; but that all and every such letters patents, Commissions, and grants made, or to be made by his Majesty, his heirs or successors, and all powers and authorities granted or pretended or mentioned to be granted thereby, and all Acts, sentences, and decrees to be made by virtue or colour thereof, shall be utterly void and of none effect.

13 CAR. II. c. 12, A.D. 1661.

An Act for Explanation of a Clause contained in an Act of Parliament, made in the Seventeenth Year of the late King Charles, intituled "An Act for Repeal of a Branch of a Statute, Primo Elizabethæ, concerning Commissioners for Causes Ecclesiastical."

I. Whereas, in an Act of Parliament, made in the seventeenth year of the late King Charles, intituled "An Act for Repeal of a Branch of a Statute *Primo Elizabethæ*, concerning Commissioners for Causes Ecclesiastical," it is (amongst other things) enacted, that no Archbishop, Bishop, or Vicar-General, nor any Ordinary whatsoever, nor any other Spiritual or Ecclesiastical Judge, officer, or minister of justice, nor any other person or persons whatsoever, exercising Spiritual or Ecclesiastical Power, Authority, or Jurisdiction, by any grant, licence, or commission of the King's Majesty, his heirs or successors, or by any power or authority derived from the King, his heirs or successors, or otherwise, shall (from and after the first day of August, which then should be in the year of our Lord God one thousand six hundred forty and one), award, impose, or inflict any pain, penalty, fine, amerciamment, imprisonment, or other corporal punishment upon any of the King's subjects for any contempt, misdemeanour, crime, offence, matter, or thing whatsoever, belonging to Spiritual or Ecclesiastical Cognizance or Jurisdiction; whereupon some doubt hath been made, that all ordinary power of coercion and proceedings in Causes Ecclesiastical hath been taken away, whereby the ordinary course of justice in Causes Ecclesiastical hath been obstructed,

be it therefore declared and enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords and Commons in this present Parliament assembled, and by the authority thereof, that neither the said Act, nor any thing therein contained, doth or shall take away any ordinary power or authority from any of the said Archbishops, Bishops, or any other person or persons named as aforesaid, but that they and every of them exercising Ecclesiastical Jurisdiction, may proceed, determine, sentence, execute, and exercise all manner of Ecclesiastical Jurisdiction, and all censures and coercions appertaining and belonging to the same before the making of the Act before recited, in all causes and matters belonging to Ecclesiastical Jurisdiction, according to the King's Majesty's Ecclesiastical Laws used and practised in this Realm, in as ample manner and form as they did and might lawfully have done before the making of the said Act.

II. And be it further enacted by the authority aforesaid, that the afore-recited Act of *decimo septimo Caroli*, and all the matters and clauses therein contained (excepting what concerns the High Commission Court, or the new erection of some such like Court by Commission) shall be and is hereby repealed to all intents and purposes whatsoever; any thing, clause, or sentence in the said Act contained to the contrary notwithstanding.

III. Provided always, and it is hereby enacted, that neither this Act, nor any thing herein contained, shall extend or be construed to revive or give force to the said branch of the said Statute, made in the said first year of the reign of the said late Queen Elizabeth, mentioned in the said Act of Parliament, made in the said seventeenth year of the reign of the said King Charles, but that the said branch of the said Statute, made in the said first year of the reign of the said late Queen Elizabeth, shall stand and be unrepealed in such sort as if this Act had never been made.

IV. Provided also, and it is hereby further enacted, that it shall not be lawful for any Archbishop, Bishop, Vicar-General, Chancellor, Commissary, or any other Spiritual or Ecclesiastical Judge, officer, or minister, or any other person having or exer-

cising Spiritual or Ecclesiastical Jurisdiction, to tender or administer to any person whatsoever, the oath usually called the oath *ex officio*, or any other oath, whereby such person to whom the same is administered may be charged or compelled to confess, or accuse, or to purge him or herself of any criminal matter or thing, whereby he or she may be liable to any censure or punishment; any thing in this Statute, or any other law, custom, or usage heretofore to the contrary hereof in any wise notwithstanding.

V. Provided always that this Act, or any thing therein contained, shall not extend or be construed to extend to give unto any Archbishop, Bishop, or any other Spiritual or Ecclesiastical Judge, officer, or other person or persons aforesaid, any power or authority to exercise, execute, inflict, or determine any Ecclesiastical Jurisdiction, censure, or coercion which they might not by law have done before the year of our Lord one thousand six hundred and thirty-nine; nor to abridge or diminish the King's Majesty's Supremacy in Ecclesiastical Matters and Affairs; nor to confirm the Canons made in the year one thousand six hundred and forty, nor any of them; nor any other Ecclesiastical Laws or Canons not formerly confirmed, allowed, or enacted by Parliament, or by the established laws of the land, as they stood in the year of our Lord one thousand six hundred and thirty-nine.

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